

silencing and banning the speech the majority does not agree with. It is about canceling 75 million Trump voters and criminalizing political viewpoints.

That is what this trial is really about. It is the only existential issue before us. It asks for constitutional cancel culture to take over in the United States Senate.

Are we going to allow canceling and banning and silencing to be sanctioned in this body?

To the Democrats, who view this as a moment of opportunity, I urge you instead to look to the principles of free expression and free speech. I hope, truly, that the next time you are in the minority, you don't find yourself in this position.

To the Republicans in this Chamber, I ask when you are next in the majority, please resist what will be an overwhelming temptation to do this very same thing to the opposing party.

Members of the Senate, this concludes the formal defense of the 45th President of the United States to the Impeachment Article filed by the House of Representatives.

I understand that there is a procedure in place for questions, and we await them; thereafter, we will close on behalf of President Trump.

Mr. President, we yield the balance of our time.

The PRESIDENT pro tempore. The majority leader.

#### RECESS

Mr. SCHUMER. Mr. President, I ask unanimous consent that we take a 15-minute recess.

There being no objection, at 3:16 p.m., the Senate, sitting as a Court of Impeachment, recessed until 3:54 p.m.; whereupon the Senate reassembled when called to order by the President pro tempore.

#### SENATORS' QUESTIONS

The PRESIDENT pro tempore. The Senate will come to order.

Pursuant to the provisions of S. Res. 47, the Senate has provided 4 hours during which Senators may submit questions in writing directed either through the managers on the part of the House of Representatives or counsel for the former President.

The majority leader.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the answers within the 4-hour question period be limited to 5 minutes each, and if the questions are directed to both parties, the times be equally divided; furthermore, that questions alternate sides proposing questions for as long as both sides have questions.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The Senator will submit it.

The question from Senator SCHUMER with Senator FEINSTEIN is directed to the House managers.

The clerk will read it.

The legislative clerk read the question as follows:

Isn't it the case that the violent attack and siege on the Capitol on January 6 would not have happened if not for the conduct of President Trump?

The PRESIDENT pro tempore. The House managers have up to 5 minutes.

Mr. Manager CASTRO of Texas. Good afternoon, everybody. To answer your question very directly, Donald Trump assembled the mob. He assembled the mob, and he lit the flame. Everything that followed was because of his doing, and although he could have immediately and forcibly intervened to stop the violence, he never did. In other words, this violent, bloody insurrection that occurred on January 6 would not have occurred but for President Trump.

The evidence we presented in trial makes this absolutely clear. This attack, as we said, didn't come from one random speech, and it didn't happen by accident, and that mob didn't come out of thin air.

Before the election, Donald Trump spread lie after lie about potential fraud—an election, remember, that hadn't even happened yet. Months before the election took place, he was saying it was rigged and that it was going to be stolen. All of his supporters believed that the only way he was going to lose is if the election was stolen, if the election was rigged.

And when he did lose, he spent week after week inciting his supporters to believe that their votes had been stolen and that the election was fraudulent and it was their patriotic duty to fight like hell to stop the steal and take their country back.

And, remember, this is in the United States, where our vote is our voice. You tell somebody that an election victory is being stolen from them, that is a combustible situation.

And he gave them clear direction on how to deal with that.

For example, on December 19, 18 days prior to January 6, President Trump told them how and where to fight for it. He first issued his call to action for January 6. This was a "save the date" sent 18 days before the event on January 6, and it wasn't just a casual one-off reference or a singular invitation.

For the next 18 days, he directed all of the rage he had incited to January 6; and that was, for him, what he saw as his last chance to stop the transfer of power, to stop from losing the Presidency. And he said things like, "Fight to the death" and January 6 will be a "wild" and "historic day." And this was working. They got the message.

In the days leading to the attack, report after report, social media post after social media post, confirmed that these insurgents were planning armed violence, but they were planning it because he had been priming them, because he had been amping them up. That is why they were planning it.

And these posts, confirmed by reports from the FBI and Capitol Police,

made clear that these insurgents were planning to carry weapons, including guns, to target the Capitol itself. And yet Donald Trump, from January 5 to the morning of his speech, tweeted 34 times, urging his supporters to get ready to stop the steal.

He even, on the eve of the attack, warned us that it was coming. He warned us that thousands were descending into DC and would not take it anymore.

When they got here at the Save America March, he told them again in that speech exactly what to do. His lawyer opened with:

Let's have trial by combat.

That was Rudy Giuliani. And Donald Trump brought that message home. In fact, he praised Rudy Giuliani as a fighter, and President Trump used the words "fight" or "fighting" 20 times in that speech.

Remember, you have just told these people—these thousands of people—that somebody has stolen your election, your victory; you are not going to get the President that you love.

Senators, that is an incredibly combustible situation when people are armed and they have been saying that they are mad as hell and they are not going to take it anymore.

He looked out to a sea of thousands, some wearing body armor, helmets, holding sticks and flag poles, some of which they would later use to beat Capitol Police; and he told them that they could play by different rules—play by different rules. He even, at one point, quite literally, pointed to the Capitol as he told them to "fight like hell."

After the attack, you know, we have shown clearly, well, that once the attack began, insurgent after insurgent made clear they were following the President's orders. You saw us present that evidence of the insurgents who were there that day who said: I came because the President asked me to come. I was here at his invitation. You saw that of the folks that were in the Capitol that day.

The PRESIDENT pro tempore. The time has expired.

Are there further questions?

Mr. GRAHAM. Mr. President.

The PRESIDENT pro tempore. Does the Senator from South Carolina have a question?

Mr. GRAHAM. Thank you very much, Mr. President.

I send a question to the desk on behalf myself, Senators CRUZ, MARSHALL, and CRAMER to counsel.

The PRESIDENT pro tempore. Senator GRAHAM, for himself, Senator CRUZ, Senator MARSHALL, and Senator CRAMER, submits a question to the counsel for Donald Trump.

The clerk will read the question.

The legislative clerk read as follows:

Does a politician raising bail for rioters encourage more rioting?

The PRESIDENT pro tempore. Counsel has 5 minutes.

Mr. Counsel CASTOR. Yes.

The PRESIDENT pro tempore. Does counsel yield back the rest of their time?

Mr. Counsel CASTOR. I do.

The PRESIDENT pro tempore. Counsel's time is yielded back.

Are there other questions?

Mr. WARNOCK. Mr. President.

The PRESIDENT pro tempore. The Senator from Georgia.

Mr. WARNOCK. I send a question to the desk.

The PRESIDENT pro tempore. Send it to the desk.

The Senator from Georgia, Senator WARNOCK, has a question for the House Managers.

The clerk will read the question.

The legislative clerk read as follows:

Is it true or false that in the months leading up to January 6th, dozens of courts, including State and Federal courts in Georgia, rejected President Trump's campaign's efforts to overturn his loss to Joe Biden?

The PRESIDENT pro tempore. The House manager is recognized for 5 minutes.

Mr. Manager RASKIN. Mr. President, Senators, that is true. That is true.

I want to be clear, though, that we have absolutely no problem with President Trump having pursued his belief that the election was being stolen or that there was fraud or corruption or unconstitutionality. We have no problem at all with him going to court to do it and he did and he lost in 61 straight cases. In Federal court and State court, in the lowest courts in the land, in the U.S. Supreme Court, he lost it.

He lost in courts in Pennsylvania, Arizona, Georgia, Michigan, Minnesota, Nevada, and Wisconsin. All of them said the same thing; they couldn't find any corruption; they couldn't find any fraud, certainly nothing rising to a material level that would alter the outcome of any of the elections; and there was no unconstitutionality. That is the American system.

So, I mean, it is hard to imagine him having gotten more due process than that in pursuing what has come to be known popularly as the big lie, the idea that somehow the election was being stolen from him. We have no problem with the fact that he went to court to do all those things.

But notice, No. 1, the big lie was refuted, devastated, and demolished in Federal and State courts across the land, including by eight judges appointed by President Donald Trump himself.

We quoted earlier in the case what happened in Pennsylvania, where U.S. District Court Judge Matthew Brann said: In the United States, this can—that

This Court has been presented with strained legal arguments without merit and speculative accusations . . .

In the [United States of America], this cannot justify the disenfranchisement of a single voter, let alone all the voters of its sixth most populated state. Our people, laws, and institutions demand more.

Then it went up to Judge Stephanos Bibas, who is a Trump appointee, who is part of the appeals court panel. He said:

The Campaign's claims have no merit. The number of ballots it specifically challenges is far smaller than the [roughly] 81,000-vote margin of victory. And it never claims fraud or that any votes were cast by illegal voters. Plus, tossing out millions of mail-in ballots would be drastic and unprecedented, disenfranchising a huge swath of the electorate and upsetting all down-ballot races too.

Which, incidentally, they weren't being challenged, even though it was the exact same ballot that had been brought.

So the problem was when the President went from his traditional combat, which was fine, to intimidating and bullying State election officials and State legislators, and then finally, as Representative CHENEY said, summoning a mob, assembling a mob, and then lighting the match for an insurrection against the Union.

When he crossed over from non-violent means, no matter how ridiculous or absurd—that is fine. He is exercising his rights—to inciting violence, that is what this trial is about.

We heard very little of that from the presentation of the President's lawyers. They really didn't address the facts of the case at all. There were a couple of propaganda reels about Democratic politicians that would be excluded in any court in the land. They talked about the Rules of Evidence. All of that was totally irrelevant to the case before us. Whatever you think about it, it is irrelevant, and we will be happy, of course, to address the First Amendment argument too.

Ms. COLLINS. Mr. President.

The PRESIDENT pro tempore. The Senator from Maine.

Ms. COLLINS. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The question is from Senator COLLINS and Senator MURKOWSKI. It is for the counsel for the former President.

The clerk will read the question.

The legislative clerk read as follows:

Exactly when did President Trump learn of the breach of the Capitol, and what specific actions did he take to bring the rioting to an end, and when did he take them? Please be as detailed as possible.

Mr. Counsel VAN DER VEEN. Is it possible to read the question again?

The PRESIDENT pro tempore. The clerk will read the question again.

The legislative clerk read as follows:

Exactly when did President Trump learn of the breach of the Capitol, and what specific actions did he take to bring the rioting to an end, and when did he take them? Please be as detailed as possible.

The PRESIDENT pro tempore. Mr. van der Veen.

Mr. Counsel VAN DER VEEN. The House Managers have given us absolutely no evidence, one way or the other, on that question.

We are able to piece together a timeline, and it goes all the way back

to December 31; January 2, there is a lot of interaction between the authorities and getting folks to have security beforehand on the day. We have a tweet at 2:38, so it was certainly sometime before then.

With the rush to bring this impeachment, there has been absolutely no investigation into that. And that is the problem with this entire proceeding.

The House Managers did zero investigation, and the American people deserve a lot better than coming in here with no evidence, hearsay on top of hearsay on top of reports that are hearsay.

Due process is required here, and that was denied.

Ms. ROSEN. Mr. President.

The PRESIDENT pro tempore. The Senator from Nevada.

Ms. ROSEN. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The Senator from Nevada, Senator ROSEN, submits a question for the House managers.

The clerk will read the question.

The legislative clerk read as follows:

On January 6, the anti-Semitic Proud Boys group that President Trump had told to stand by, laid siege to the Capitol alongside other rioters, including one wearing a "Camp Auschwitz" shirt. Is there evidence that President Trump knew or should have known that his tolerance of anti-Semitic hate speech, combined with his own rhetoric, could incite the kind of violence we saw on January 6?

Ms. Manager PLASKETT. Mr. President, Senators, Donald Trump has a long history of praising and encouraging violence, as you saw. He has espoused hateful rhetoric himself. He has not just tolerated it, but he has encouraged hateful speech by others. He has refused, as you saw in the September debate—that interview—to condemn extremists and White supremacist groups, like the Proud Boys, and he has, at every opportunity, encouraged and cultivated actual violence by these groups.

Yes, he has encouraged actual violence, not just the word "fight." He told groups like the Proud Boys, who had beaten people with baseball bats, to stand by.

When his supporters in the 50-car caravan tried to drive a bus of Biden campaign workers off the road, he tweeted a video of that incident with fight music attached to it and wrote: "I LOVE TEXAS!"

When his supporters sent death threats to the Republican Secretary of State Raffensperger in Georgia, he responded by calling Mr. Raffensperger an enemy of the state, after he knew of those death threats.

And in the morning of the second Million MAGA March, when it erupted in violence and burned churches, he began that day with the tweet: "We have just begun to fight."

I want to be clear that Donald Trump is not on trial for those prior statements—however as hateful and violent and inappropriate as they may be. But

his statements, the President's statements make absolutely clear three important points for our case.

First, President Trump had a pattern and practice of praising and encouraging violence, never condemning it. It is not a coincidence that those very same people—Proud Boys, organizers of the Trump caravan, supporters and speakers of the second Million MAGA March—all showed up on January 6 to an event that he had organized with those same individuals who had organized that violent attack.

Second, his behavior is different. It is not just that it was a comment by an official to fight for a cause. This is months of cultivating a base of people who were violent—not potentially violent but were violent—and that their prior conduct both helped him cultivate the very group of people that attacked us; it also shows clearly that he had that group assembled, inflamed, and, in all the public reports, ready to attack. He deliberately encouraged them to engage in violence on January 6.

President Trump had spent months calling supporters to a march on a specific day, at a specific time, for a specific purpose. What else were they going to do to stop the certification of the election on that day but to stop you—but to stop you physically? There was no other way, particularly after his Vice President said that he would refuse to do what the President asked.

The point is this: that by the time he called the cavalry—not calvary but cavalry—of his thousands of supporters on January 6, an event he had invited them to, he had every reason to know that they were armed, violent, and ready to actually fight.

He knew who he was calling and the violence they were capable of, and he still gave his marching orders to go to the Capitol and “fight like hell” to stop the steal. How else was that going to happen? If they had stayed at the Ellipse, maybe it would have just been to violently—to fight in protest with their words. But to come to the Capitol?

That is why this is different, and that is why he must be convicted and acquitted—and disqualified.

Mr. HAGERTY. Mr. President, on behalf of Senator SCOTT of South Carolina and myself, I would like to submit a question to the desk.

The PRESIDENT pro tempore. The Senator from Tennessee submits a question.

The question is for counsel for the former President from Senators HAGERTY and SCOTT of South Carolina.

The clerk will read the question.

The legislative clerk read as follows:

Given that more than 200 people have been charged for their conduct at the Capitol on January 6, that our justice system is working to hold the appropriate persons accountable, and that President Trump is no longer in office, isn't this simply a political show trial that is designed to discredit President Trump and his policies and shame the 74 million Americans who voted for him?

Mr. Counsel CASTOR. Mr. President.

The PRESIDENT pro tempore. Counsel is recognized.

Mr. Counsel CASTOR. Thank you, Senators, for that question. That is precisely what the 45th President believes this gathering is about.

We believe in law and order and trust that the Federal authorities that are conducting investigations and prosecutions against the criminals that invaded this building will continue their work and be as aggressive and thorough as we know them to always be and that they will continue to identify those that entered the inner sanctum of our government and desecrated it.

The 45th President no longer holds office, and there is no sanction available under the Constitution, in our view, for him to be removed from the office that he no longer holds. The only logical conclusion is that the purpose of this gathering is to embarrass the 45th President of the United States and in some way try to create an opportunity for Senators to suggest that he should not be permitted to hold office in the future or, at the very least, publicize this throughout the land to try to damage his ability to run for office when and if he is acquitted and, at the same time, tell the 74 million people who voted for him that their choice was the wrong choice.

I believe that this is a divisive way of going about handling impeachment, and it denigrates the great solemnity that should attach to such proceedings.

I yield the remainder of my time, Mr. President.

The PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. MARKEY. Mr. President, I send a question for the House managers to the desk because the President's counsel did not answer the question which was posed to them.

The PRESIDENT pro tempore. The Senator will send the question. Debate is not allowed.

The question is from Senator MARKEY, with Senator DUCKWORTH, to the managers on the part of the House of Representatives.

The clerk will read the question.

The legislative clerk read as follows:

Exactly when did the President

learn of the breach at the Capitol, and what steps did he take to address the violence?

Please be as detailed as possible.

The PRESIDENT pro tempore. Do the House managers wish to respond?

Ms. Manager PLASKETT. Yes. Mr. President, Senators, this attack was on live TV, on all major networks, in realtime. The President, as President, has access to intelligence information, including reports from inside the Capitol.

He knew the violence that was underway. He knew the severity of the threats. And, most importantly, he knew that Capitol Police were overwhelmingly outnumbered and in a fight for their lives against thousands of insurgents with weapons. We know he knew that. We know that he did not

send any individuals. We did not hear any tweets. We did not hear him tell those individuals: Stop. This is wrong. You must go back. We did not hear that.

So what else did the President do? We are unclear. But we believe it was a dereliction of his duty, and that was because he was the one who had caused them to come to the Capitol, and they were doing what he asked them to do. So there was no need for him to stop them from what they were engaged in.

But one of the things I would like to ask is we still have not heard and pose to you all the questions that were raised by Mr. RASKIN, Manager RASKIN, in his closing argument: Why did President Trump not tell the protesters to stop as soon as he learned about it? Why did President Trump do nothing to stop the attack for 2 hours after the attack began? Why did President Trump do nothing to help protect the Capitol and law enforcement battling the insurgents?

You saw the body cam of a Capitol Police officer at 4:29, still fighting—4:29 after since what time?—1, 2 in the afternoon. Why did he not condemn the violent insurrection on January 6?

Those are the questions that we have, as well, and the reason this question keeps coming up is because the answer is nothing.

The PRESIDENT pro tempore. Any further questions?

Mr. ROMNEY. Mr. President.

The PRESIDENT pro tempore. The Senator from Utah.

Mr. ROMNEY. I send a question to the desk.

The PRESIDENT pro tempore. The Senator from Utah, Mr. ROMNEY, on behalf of himself and Senator COLLINS, submits a question.

The clerk will read the question.

Oh, I apologize. The question is for both sides, and the time will be evenly divided.

The legislative clerk read as follows:

When President Trump sent the disparaging tweet at 2:24 p.m. regarding Vice President Pence, was he aware that the Vice President had been removed from the Senate by the Secret Service for his safety?

The PRESIDENT pro tempore. The House managers. And time will be evenly divided.

Mr. Manager RASKIN. I'm sorry. Could the question be read again, Mr. President.

The PRESIDENT pro tempore. Of course.

Could the clerk read the question again.

The legislative clerk read as follows:

When President Trump sent the disparaging tweet at 2:24 p.m. regarding Vice President Pence, was he aware that the Vice President had been removed from the Senate by the Secret Service for his safety?

The PRESIDENT pro tempore. The House managers are recognized for 2½ minutes.

Mr. Manager CASTRO of Texas. Thank you. Well, let me tell you what he said at 2:24 p.m. He said:

Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution . . . USA demands the truth!

And you know by now what was all over the media. You couldn't turn on the television, you couldn't turn on the radio, you couldn't consume any media or probably take any phone calls or anything else without hearing about this and also hearing about the Vice President.

And here is what Donald Trump had to know at that time because the whole world knew it. All of us knew it. Live television had, by this point, shown that the insurgents were already inside the building and that they had weapons and that the police were outnumbered.

And here are the facts that are not in dispute. Donald Trump had not taken any measures to send help to the overwhelmed Capitol Police.

As President, at that point, when you see all this going on and the people all around you are imploring you to do something and your Vice President is there, why wouldn't you do it? Donald Trump had not publicly condemned the attack, the attackers, or told them to stand down despite multiple pleas to do so, and Donald Trump hadn't even acknowledged the attack.

And, after Wednesday's trial portion concluded, Senator TUBERVILLE spoke to reporters and confirmed the call that he had with the President and did not dispute Manager CICILLINE's description in any way that there was a call between he and the President around the time that Mike Pence was being ushered out of the Chamber, and that was shortly after 2 p.m.

And Senator TUBERVILLE specifically said that he told the President: Mr. President, they just took the Vice President out; I have got to go.

That was shortly after 2 p.m. There were still hours of chaos and carnage and mayhem, and the Vice President and his family were still in danger at that point. Our Commander in Chief did nothing.

The PRESIDENT pro tempore. Counsel for the former President.

Mr. Counsel VAN DER VEEN. The answer is no. At no point was the President informed the Vice President was in any danger. Because the House rushed through this impeachment in 7 days with no evidence, there is nothing at all in the record on this point because the House failed to do even a minimum amount of due diligence.

What the President did know is that there was a violent—there was a violent riot happening at the Capitol. That is why he repeatedly called via tweet and via video for the riots to stop, to be peaceful, to respect Capitol Police and law enforcement, and to commit no violence and to go home.

But to be clear, this is an Article of Impeachment for incitement; this is not an Article of Impeachment for anything else. It is one count. They could have charged anything they wanted.

They chose to charge incitement. So that the question—although answered directly no, it is not really relevant to the charges for the impeachment in this case.

And I just wanted to clear up one more thing. Mr. CASTRO, in his first answer, may have misspoke, but what he said was Mr. Trump had said “fight to the death.” That is false. I am hoping he misspoke.

Thank you.

Ms. KLOBUCHAR. Mr. President.

The PRESIDENT pro tempore. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, on behalf of myself and Senators CASEY and BROWN, I send a question to the desk.

The PRESIDENT pro tempore. This is a question from Senator KLOBUCHAR, Senator CASEY, and Senator BROWN to the House managers.

The clerk will read the question.

The legislative clerk read as follows:

In presenting your case, you relied on past precedents from impeachment trials, such as William Belknap's impeachment. After what you have presented in the course of this trial, if we do not convict former President Trump, what message will we be sending to future Presidents and Congresses?

Ms. Manager PLASKETT. As we have shown, President Trump engaged in a course of conduct that incited an armed attack on the Capitol. He did so while seeking to overturn the results of the election and thwart the transfer of power. And when the attack began, he further incited violence aimed to his own Vice President, even demonstrating his state of mind by failing to defend us and the law enforcement officials who protect us.

The consequences of his conduct were devastating on every level. Police officers were left overwhelmed, unprotected. Congress had to be evacuated; our staff barricaded in this building, calling their families to say goodbye. Some of us, like Mr. RASKIN, had children here.

And these people in this building, some of whom were on the FBI's watch list, took photos, stole laptops, destroyed precious statues, including one of John Lewis, desecrated the statue of a recently deceased Member of Congress who stood for nonviolence.

This was devastating. And the world watched us, and the world is still watching us to see what we will do this day and will know what we did this day 100 years from now.

Those are the immediate consequences, and our actions will reverberate as to what are the future consequences. The extremists who attacked the Capitol at the President's provocation will be emboldened. All our intelligence agencies have confirmed this; it is not House managers saying that. They are quite literally standing by and standing ready. Donald Trump told them: This is only the beginning. They are waiting and watching to see if Donald Trump is right that everyone said this was totally appropriate.

Let me also bring something else up. I will briefly say that defense counsel put a lot of videos out in their defense, playing clip after clip of Black women talking about fighting for a cause or an issue or a policy. It was not lost on me, as so many of them were people of color and women and Black women, Black women like myself, who are sick and tired of being sick and tired for our children—your children, our children.

This summer, things happened that were violent, but there were also things that gave some of us Black women great comfort: seeing Amish people from Pennsylvania standing up with us, Members of Congress fighting up with us. And so I thought we were past that. I think maybe we are not.

There are longstanding consequences, decisions like this that will define who we are as a people, who America is. We have in this room made monumental decisions. You all have made monumental decisions. We have declared wars, passed civil rights acts, ensured that no one in this country is a slave. Every American has the right to vote, unless you live in a territory. At this time, some of these decisions are even controversial, but history has shown that they define us as a country and as a people. Today is one of those moments, and history will wait for our decision.

Mr. LEE. Mr. President.

The PRESIDENT pro tempore. The Senator from Utah.

Mr. LEE. I send a question to the desk.

The PRESIDENT pro tempore. The Senator from Utah, Mr. LEE, sends a question on behalf of himself, Senator HAWLEY, Senator CRAPO, Senator BLACKBURN, and Senator PORTMAN, and the question is for the counsel for the former President.

The clerk will read the question.

The legislative clerk read as follows:

Multiple State constitutions enacted prior to 1787—namely, the constitutions of Delaware, Virginia, Pennsylvania, and Vermont—specifically provided for the impeachment of a former officer. Given that the Framers of the U.S. Constitution would have been aware of these provisions, does their decision to omit language specifically authorizing the impeachment of former officials indicate that they did not intend for our Constitution to allow for the impeachment of former officials?

Mr. Counsel VAN DER VEEN. Good question, and the answer is yes, of course they left it out. The Framers were very smart men, and they went over draft after draft after draft on that document, and they reviewed all the other drafts of all of the State constitutions, all of them. They picked and chose what they wanted, and they discarded what they did not. What they discarded was the option for all of you to impeach a former elected official.

I hope that is answering your question. Thank you.

Mr. PADILLA. Mr. President.

The PRESIDENT pro tempore. The Senator from California.

Mr. PADILLA. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The Senator from California submits a question for the House managers.

The clerk will read the question.

The legislative clerk read as follows:

Having been on the frontlines of combatting the “big lie” over the past 4 years as California’s chief elections officer, it is clear that President Trump’s plot to undermine the 2020 election was built on lies and conspiracy theories. How did this plot to unconstitutionally keep President Trump in power lead to the radicalization of so many of President Trump’s followers and the resulting attack on the Capitol?

Mr. Manager CASTRO. Senators, Donald Trump spent months inciting his base to believe that their election was stolen, and that was the point—that was the thing that would get people so angry. Think about that, what it would take to get a large group of thousands of Americans so angry to storm the Capitol. That was the purpose behind Donald Trump saying that the election had been rigged and that the election had been stolen.

To be clear, when he says the election is stolen, what he is saying is that the victory—and he even says one time, the election victory—has been stolen from them. Think about how significant that is to Americans. Again, you are right, over 70 million—I think 74 million people voted for Donald Trump. And this wasn’t a one-off comment. It wasn’t one time. It was over and over and over and over and over again, with a purpose.

We are not having this impeachment trial here because Donald Trump contested the election. As I said during the presentation, nobody here wants to lose an election. We all run our races to win our elections. But what President Trump did was different. What our Commander in Chief did was the polar opposite of what we are supposed to do. We let the people decide the elections, except President Trump. He directed all of that rage that he had incited to January 6, the last chance—again, to him, this was his last chance. This was certifying the election results. He needed to whip up that mob, amp them up enough to get out there and try to stop the election results, the certification of the election. And, you all, they took over the Senate Chamber to do that. They almost took over the House Chamber. There were 50 or so or more House Members who were literally scared for their lives up in the Gallery.

A woman who bought into that big lie died because she believed the President’s big lie. This resulted in a loss of one of his supporter’s lives. A Capitol Police officer died that day—other of President Trump’s supporters. Two Capitol Police officers ended up taking their own lives.

Defense counsel—their defense is basically everything President Trump did is OK, and he could do it again. Is that what we believe; that there is no problem with that, that it is perfectly fine if he does the same thing all over again?

This is dangerous. He is inciting his base. He was using the claim of a rigged election. We have never seen somebody do that over and over and over again—tell a lie, say 6 months ahead of time that it is a rigged election.

There is a dangerous consequence to that when you have millions of followers on Twitter and millions of followers on Facebook and you have that huge bully pulpit of the White House and you are the President of the United States. There is a cost to doing that. People are listening to you in a way that, quite honestly, they are not listening to me and they are not listening to all of us in this room.

I just want to clear up—the defense counsel made a point about something that I read earlier. The defense counsel suggested I misspoke. I just want to clarify for the record that the tweet I referenced—let me read you the tweet directly:

If a Democrat Presidential Candidate had an Election Rigged & Stolen, with proof of such acts at a level never seen before, the Democrat Senators would consider it an act of war, and fight to the death. Mitch & the Republicans do NOTHING, just want to let it pass. NO FIGHT!

So Donald Trump was equating what Democrats would do if their election was stolen. He said they’d fight to the death. Why do you think he sent that tweet? Because he is trying to say: Hey, the other side would fight to the death; so you should fight to the death.

I mean, do we read that any other way?

The PRESIDENT pro tempore. The Senator from Missouri.

Mr. HAWLEY. Mr. President, on my behalf and the behalf of Senator CRAMER, I send a question to the desk.

The PRESIDENT pro tempore. Senator HAWLEY, on behalf of himself and Senator CRAMER, sends a question for the counsel and House managers. And following our procedure, the first one to respond after it is read will be the counsel for the former President.

The legislative clerk read as follows:

If the Senate’s power to disqualify is not derivative of the power to remove a convicted President from office, could the Senate disqualify a sitting President but not remove him or her?

Mr. Counsel VAN DER VEEN. Would you read that question again, if you would please?

The legislative clerk read as follows:

If the Senate’s power to disqualify is not derivative of the power to remove a convicted President from office, could the Senate disqualify a sitting President but not remove him or her?

The PRESIDENT pro tempore. Counsel for the former President has 2½ minutes.

Mr. Counsel VAN DER VEEN. No. But I can’t let this rest. Mr. CASTRO attributed a statement the time before last that he was up here that Donald Trump had told his people to fight to the death. I am not from here. I am not like you guys. I was being very polite in giving an opportunity to correct the

record, and I thought that is exactly what he would do.

But instead, what he did is he came up and illustrated the problem with the presentation of the House case. It has been smoke and mirrors, and, worse, it has been dishonest. He came up and tried to cover when he got caught, as they were caught earlier today with all of the evidence, checking tweets, switching dates—everything they did.

And bear in mind, I had 2 days to look at their evidence. And when I say 2 days, I mean they started putting in their evidence. So I started being able to get looking at it. That is not the way this should be done.

But what we discovered was, he knew what he was doing. He knew that the President didn’t say that to his people. What he said was, if it happened to the Democrats, this is what they would do. In his speech that day, you know what he said? He said, if this happened to the Democrats, if the election were stolen from the Democrats, all hell would break loose. But he said to his supporters: We are smarter. We are stronger. And we are not going to do what they did all summer long.

So what he did was he misrepresented a tweet to you to put forth the narrative that is wrong. It is wrong. It is dishonest, and the American people don’t deserve this any longer. You must acquit.

The PRESIDENT pro tempore. The Representative from the House of Representatives has 2½ minutes.

Mr. Manager RASKIN. Thank you, Mr. President.

That was profoundly inaccurate and irrelevant to what the question is. So I am going to get back to the question.

So under article II, section 4, a President who is in office must be convicted before removal and then must be removed before disqualification.

OK. But if the President is already out of office, then he can be separately disqualified, as this President is. But these powers have always been treated as separate issues, which is why I think there have been eight people who have been convicted and removed, and just three of them disqualified.

And, as you know, there is a totally separate process within the Senate for doing this. The Constitution requires a two-thirds vote for conviction. But for disqualification, it is a majority vote. It is a separate thing. So people could vote to convict and then vote not to disqualify. If they felt that the evidence demonstrated the President was guilty of incitement to insurrection, they could vote to convict. If they felt they didn’t want to exercise the further power established by the Constitution to disqualify, they wouldn’t even have to do that. And that could be something that is taken up separately by the Senate and by a majority vote.

The PRESIDENT pro tempore. The Senator from Massachusetts.

Ms. WARREN. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The Senator from Massachusetts has a question for the House managers.

The clerk will read the question.

The legislative clerk read as follows:

The defense's presentation highlighted the fact that Democratic Members of Congress raised objections to the counting of electoral votes in past joint sessions of Congress. To your knowledge, were any of those Democratic objections raised after insurrectionists stormed the Capitol in order to prevent the counting of electoral votes and after the President's personal lawyer asked Senators to make these objections specifically to delay the certification?

Mr. Manager RASKIN. Thank you very much, Mr. President, for the opportunity to respond to that.

The answer is no, we are not aware that any other objections were raised in the counting of electoral college votes, either by Democrats or Republicans. This has been kind of a proud bipartisan tradition under the electoral college because the electoral college is so arcane and has so many rules to it.

I think that my cocounsel on the other side had some fun because I was one of the people who took, I think, about 30 seconds in 2016 to point out that the electors from Florida were not actually conforming to the letter of the law because they have a rule in Florida that you can't be a dual officeholder. In other words, you can't be a State legislator and also be an elector. That was improper form.

I think then Vice President Biden properly gaveled me down and said: Look, we are going to try to make the electoral college work, and we are going to vindicate the will of the people.

And that is pretty much what happened.

Nobody has stormed the Capitol before or, as Representative CHENEY, the secretary of the Republican conference said, gone out and summoned a mob, assembled a mob, incited a mob, and lit a match. As Representative CHENEY said, all of this goes to the doorstep of the President. None of it would have happened without him and everything is due to his actions. This would not have happened.

That is the chair of the House Republican conference, who was the target of an effort to remove her, which was rejected on a vote of by more than 2 to 1 in the House Republican conference, when there was an attempt to remove her for voting for impeachment and becoming a leader for vindicating our constitutional values.

So please don't mix up what Republicans and Democrats have done, I think, in every election for a long time, to say there are improprieties going on in terms of conforming with State election laws, with the idea of mobilizing a mob insurrection against the government that got 5 people killed, 140 Capitol officers wounded, and threatened the actual peaceful succession of power and transfer of power in America.

If you want to talk about reforming the electoral college, we can talk about reforming the electoral college. You don't do it by violence.

The PRESIDENT pro tempore. The Senator from North Dakota.

Mr. CRAMER. My apologies to the Senator from Massachusetts for butting in.

I send a question to the desk for the former President's attorneys.

The PRESIDENT pro tempore. The question from Senator CRAMER is for the counsel for the former President.

The clerk will read the question.

The legislative clerk read as follows:

Given the allegations of the House manager that President Trump has tolerated anti-Semitic rhetoric, has there been a more pro-Israel President than President Trump?

Mr. Counsel VAN DER VEEN. No. But it is apparent that nobody listened to what I said earlier today, because the vitriolic speech needs to stop. You need to stop.

There was nothing funny here, Mr. RASKIN. We aren't having fun here. This is about the most miserable experience I have had down here in Washington, DC. There is nothing fun about it.

And in Philadelphia, where I come from, when you get caught doctoring the evidence, your case is over, and that is what happened. They got caught doctoring the evidence, and this case should be over.

The PRESIDENT pro tempore. The Senator from Vermont.

Mr. SANDERS. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The Senator from Vermont, Mr. SANDERS, has a question for both the counsel for the former President and the House managers.

The clerk will read the question, and following our procedure, the House managers will go first.

The legislative clerk read as follows:

The House prosecutors have stated over and over again that President Trump was perpetrating a big lie when he repeatedly claimed that the election was stolen from him and that he actually won the election by a landslide.

Are the prosecutors right when they claim that Trump was telling a big lie or, in your judgment, did Trump actually win the election?

The PRESIDENT pro tempore. The House managers have up to 2½ minutes.

Ms. Manager PLASKETT. As we all know, President Trump did lose the election by 7 million votes, 306 electoral votes. By the time of the January 6 attack, the courts, the Justice Department, all 50 States across the country had done—agreed that the votes were counted. The people had spoken, and it was time for the peaceful transfer of power as our Constitution and the rule of law demands. Sixty-one courts—61 courts—the President went to. That is fine, appropriate. He lost. He lost. He lost the election. He lost the court case.

As Leader MCCONNELL recognized the day after the electors certified the votes on December 14, he said:

Many millions of us had hoped that the Presidential election would yield a different

result, but our system of government has processes to determine who will be sworn in on January 20. The electoral college has spoken.

Patriotism. Sometimes, there is a reason to dispute an election. Sometimes, the count is close. Sometimes, we ask for a recount, go to courts. All of that is appropriate. I lost my first election. I stayed in bed for 3 days. We do what we need to do, and we move on. This was not that because, when all of these people confirmed that Donald Trump had lost, when the courts, his—his—Department of Justice, State officials, Congress, his Vice President were ready to commit to the peaceful transfer of power—the peaceful transfer of power—Donald Trump was not ready, and we are all here because he was not ready.

Day after day, he told his supporters false, outlandish claims of why this election was rigged. Now, let's be clear: President Trump had absolutely no support of these claims, but that wasn't the point of what he was doing. He did it to make his supporters frustrated, to make them angry.

The PRESIDENT pro tempore. Time has expired.

Counsel for the former President is recognized for 2½ minutes.

Mr. Counsel VAN DER VEEN. Thank you.

May I have the question read again and not have it count against my time?

The PRESIDENT pro tempore. Of course.

The clerk will read the question again.

The legislative clerk read as follows:

The House prosecutors have stated over and over again that President Trump was perpetrating a big lie when he repeatedly claimed that the election was stolen from him and that he actually won the election by a landslide.

Are the prosecutors right when they claim that Trump was telling a big lie or, in your judgment, did Trump actually win the election?

The PRESIDENT pro tempore. Counsel for the former President has 2½ minutes.

Mr. Counsel VAN DER VEEN. Who asked that?

Mr. SANDERS. I did.

Mr. Counsel VAN DER VEEN. My judgment is irrelevant in this proceeding. It absolutely is. What is supposed to happen here is the Article of Impeachment—

The PRESIDENT pro tempore. The Senate will be in order.

Senators, under the rules, cannot challenge the content of the response.

Counsel will continue.

Mr. Counsel VAN DER VEEN. May I have the question read again, please?

The legislative clerk read as follows:

The House prosecutors have stated over and over again that President Trump was perpetrating a big lie when he repeatedly claimed that the election was stolen from him and that he actually won the election by a landslide.

Are the prosecutors right when they claim that Trump was telling a big lie or, in your judgment, did Trump actually win the election?



Mr. Counsel VAN DER VEEN. In my judgment, it is irrelevant to the question before this body. What is relevant in this Impeachment Article is, were Mr. Trump's words inciteful to the point of violence and riot? That is the charge. That is the question; and the answer is, no, he did not have speech that was inciteful to violence or riot.

Now, what is important to understand here is the House managers have completely, from the beginning of this case to right now, done everything except answer that question—the question they brought before you, the question they want my client to be punished by. That is the question that should be getting asked.

The answer is, he advocated for peaceful, patriotic protest. Those are his words. The House managers have shown zero—zero—evidence that his words did anything else. Remember, all of the evidence is this was premeditated; the attack on the Capitol was preplanned. It didn't have anything to do with Mr. Trump in any way, what he said on that day on January 6 at that Ellipse, and that is the issue before this Senate.

Now, on the issue of contesting elections and the results, the Democrats have a long, long history of just doing that. I hope everybody was able to see the video earlier today. Over and over again, it has been contested. When Mr. Trump was elected President, we were told that it was hijacked.

The PRESIDENT pro tempore. The former President's counsel's 2½ minutes has expired.

The Senator from Wisconsin.

Mr. JOHNSON. Mr. President, I send a question to the desk for both parties.

The PRESIDENT pro tempore. The Senator from Wisconsin sends a question for both counsel for the former President and the House managers.

The clerk will read the question, and the counsel for the former President will have the first 2½ minutes.

The legislative clerk read as follows:

The House managers assert that the January 6 attack was predictable, and it was foreseeable. If so, why did it appear that law enforcement at the Capitol were caught off guard and unable to prevent the breach? Why did the House Sergeant at Arms reportedly turn down a request to activate the National Guard, stating that he was not comfortable with the optics?

The PRESIDENT pro tempore. Counsel for the former President is recognized.

Mr. Counsel VAN DER VEEN. Would you read the question again, please?

The PRESIDENT pro tempore. The clerk will read the question again.

The legislative clerk read as follows:

The House managers assert that the January 6 attack was predictable, and it was foreseeable. If so, why did it appear that law enforcement at the Capitol were caught off guard and unable to prevent the breach? Why did the House Sergeant at Arms reportedly turn down a request to activate the National Guard, stating that he was not comfortable with the optics?

Mr. Counsel VAN DER VEEN. Holy cow. That is a really good question.

Had the House managers done their investigation, maybe somebody would have an answer to that, but they didn't. They did zero investigation. They did nothing. They looked into nothing. They read newspaper articles. They talked to their friends—you know, a TV reporter or something or something or another.

But, Jiminy Cricket, there is no due process in this proceeding at all, and that question highlights the problem. When you have no due process, you have no clear-cut answers, but we do know that there was, I think, a certain level of foreseeability. It looks like, from the information they were presenting, some law enforcement knew that something could be happening.

In my presentation, we knew that the mayor, 2 days before—before—had been offered to have Federal troops or National Guard deployed, beef up security here, and Capitol Police. It was offered. So somebody had to have an inkling of something. My question is, Who ignored it and why? If an investigation were done, we would know the answer to that too.

Thank you.

The PRESIDENT pro tempore. The House managers have 2½ minutes.

Ms. Manager PLASKETT. First, if defense counsel has exculpatory evidence, you are welcome to give it to us. We would love to see it. You have had an opportunity to give us evidence that would exculpate the President. Haven't seen it yet.

Everyone—the defense counsel wants to blame everyone else except the person who was most responsible for what happened on January 6, and that is President Trump, Donald Trump. He is the person who foresaw this the most because he had the reports; he had access to the information. He, as well, had—we all know how he is an avid cable news watcher. He knew what was going to happen. He cultivated these individuals. These are the undisputed facts.

The National Guard was not deployed until over 2 hours after the attack. I heard reference to Mayor Bowser in the defense's presentation. Mayor Bowser does not have authority over the Capitol or Federal buildings. She could not deploy the National Guard to the Capitol. That is outside of the jurisdiction of the Mayor of the District of Columbia.

At no point in that entire day did the President of the United States, our Commander in Chief, tell anyone—law enforcement struggling for their lives, insurgents who felt empowered by the sheer quantity of them, any of us in this building, or the American people—that he was sending help.

He did not defend the Capitol. The President of the United States did not defend the Capitol of this country. It is indefensible.

The PRESIDENT pro tempore. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. Senator MERKLEY submits a question for the House managers.

The clerk will read the question.

The legislative clerk read as follows:

If a President spins a big lie to anger Americans and stokes the fury by repeating the lie at event after event and invites violent groups to DC the day and hour necessary to interrupt the electoral college count and does nothing to stop those groups from advancing on the Capitol and fails to summon the National Guard to protect the Capitol and then expresses pleasure and delight that the Capitol was under attack, is the President innocent of inciting an insurrection because in a speech he says "be peaceful"?

The PRESIDENT pro tempore. The House managers have 5 minutes.

Mr. Manager CASTRO of Texas. You all ask a very important question, which is, given everything that the President did leading up to the election, after the election, and leading up to January 6, all of the incitement of his supporters, whom he convinced with a big lie over and over that the election had been stolen from them and from him, and then once the mob had stormed the Capitol, the Vice President was in danger, the Speaker was in danger, the Members of the House and the Senate and all the staff here—the janitorial staff, the cafeteria workers, everybody—and all of the hot rhetoric that he spoke with and then simply a few times said "stay peaceful"—remember, he said "stay peaceful" when they had already gotten violent, when they had already brought weapons, when they had already hurt people. What he never said was: Stop the attack. Leave the Capitol. Leave immediately.

Let me be clear. The President's message in that January 6 speech was incendiary. So in the entire speech, which was roughly 1,100 words, he used the word "peaceful" once, and using the word "peaceful" was the only suggestion of nonviolence. President Trump used the word "fight" or "fighting" 20 times.

Now, again, consider the context. He had been telling them a big lie over and over, getting them amped up, getting them angry because an election had been stolen from them. There are thousands of people in front of him. Some of them are carrying weapons and arms. They are angry. He is telling them to fight.

President Trump's words in that speech, just like the mob's actions, were carefully chosen. His words incited their actions. Now, how do we know this? For months, the President had told his supporters his big lie that the election was rigged, and he used the lie to urge his supporters not to concede and to stop the steal.

Mr. Manager RASKIN. If you rob a bank and on the way out the door, you yell "respect private property," that is not a defense to robbing the bank.

The PRESIDENT pro tempore. The Senator from Texas.

Mr. CRUZ. Mr. President, I send a question to the desk directed at both sides.

The PRESIDENT pro tempore. The Senator from Texas has a question for both sides.

The clerk will read the question, and the House managers will go first for 2½ minutes.

The legislative clerk read as follows:

Out of their 16 hours, the House managers devoted all of 15 minutes to articulating a newly created legal standard for incitement: 1, was violence foreseeable; 2, did he encourage violence; 3, did he do so willfully? Is this new standard derived from the Criminal Code or any Supreme Court case?

While violent riots were raging, KAMALA HARRIS said on national TV:

They're not gonna let up—and they should not.

And she also raised money to bail out violent rioters.

Using the managers' proposed standard, is there any coherent way for Donald Trump's words to be incitement and KAMALA HARRIS' words not to be incitement?

Mr. Manager RASKIN. Thank you, Mr. President and Senators.

I am not familiar with the statement that is being referred to with respect to the Vice President, but I find it absolutely unimaginable that Vice President HARRIS would ever incite violence or encourage or promote violence. Obviously, it is completely irrelevant to the proceeding at hand, and I will allow her to defend herself.

The President's lawyers are pointing out that we have never had any situation like this before in the history of the United States, and it is true. There has never been a President who has encouraged a violent insurrection against our own government. So we really have nothing to compare it to. So what we do in this trial will establish a standard going forward for all time.

Now, there are two theories that have been put before you, and I think we have got to get past all of the pica-yune, little critiques that have been offered today about this or that. Let's focus on what is really at stake here.

The President's lawyers say, echoing the President, his conduct was totally appropriate; in other words, he would do it again. Exactly what he did is the new standard for what is allowable for him or any other President who gets into office.

Our point is that his incitement so overwhelmed any possible legal standard we have that we have got the opportunity now to declare that Presidential incitement to violent insurrection against the Capitol and the Congress is completely forbidden to the President of the United States under the impeachment clauses.

So we set forth for you the elements of encouragement of violence, and we saw it overwhelmingly. We know that he picked the date of that rally. In fact, there was another group that was going to have a rally at another date, and he got it moved to January 1. He synchronized exactly with the time that we would be in joint session, and as Representative CHENEY said:

He summoned that mob, he assembled that mob, he incited that mob, he lit the match.

Come on, get real. We know that this is what happened.

The second thing is the foreseeability of it. Was it foreseeable? Remember Lansing, MI, and everything we showed you. They didn't mention that, of course. Remember the MAGA 2 march, the MAGA 2 rally. They didn't mention that. The violence all over the rally, the President cheering it on, delighting in it, reveling in it, exalting in it.

Come on. How gullible do you think we are? We saw this happen. We just spent 11 or 12 hours looking at all that.

The PRESIDENT pro tempore. The managers' time has expired.

Counsel for the former President has 2½ minutes.

Mr. Counsel VAN DER VEEN. Senator CRUZ, I believe the first part of your question refers to the newly created Raskin doctrine on the First Amendment, and he just—his answer actually gave you a new one: appropriateness.

The standard that this body needs to follow for law is *Brandenburg v. Ohio*, and the test really—the three-part test really comes out of *Bible Believers v. Wayne County*, to be specific. The speech has to be explicitly or implicitly encouraged, the use of “violence.” In other words, it has to be in the words itself, which is—clearly, it is not in the words itself. That is step one. They don't get past it.

Two, the speaker intends that his speech will result in use of violence or lawless action. There is no evidence of that, and it is ludicrous to believe that that would be true.

Third, the imminent use of violence or lawless action is likely to result from speech.

Also, they fail on all three points of the law as we know it and needs to be applied here.

I don't know why he said he never heard KAMALA HARRIS say about the riots and the people rioting and ruining our businesses and our streets that they are not going to let up and they should not because we played it three times today. We gave it to you in audio, I read it to you, and you got it in video. That is what she said. But it is protected speech. Her speech is protected also, Senator. That is the point.

You all have protections as elected officials, the highest protections under the First Amendment, and that First Amendment applies here in this Chamber to this proceeding. And that is what you need to keep focused on. You need to keep focused on what is the law and how do we apply it to this set of facts. It is your duty. You can't get caught up in all of the rhetoric and the facts that are irrelevant. You need to keep focused on what is the issue before you decided based on the law—*Brandenburg* and *Bible Believers*—and apply it to the facts, and that requires you to look at the words, and there were no words of incitement of any kind.

The PRESIDENT pro tempore. The counsels' time has expired.

The Senator from Washington.

Mrs. MURRAY. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The Senator from Washington, Senator MURRAY, has a question for the House managers.

The clerk will read the question.

The legislative clerk read as follows:

At 6:01 p.m. eastern time on January 6, President Trump tweeted:

These are the things that happen when a sacred landslide election victory is so unceremoniously and viscously stripped away from great patriots who have been badly and unfairly treated for so long.

Adding for rioters to “go home with love and in peace.”

What is the relevance of this tweet to President Trump's guilt?

The PRESIDENT pro tempore. The House managers are recognized for up to 5 minutes.

Mr. Manager CASTRO of Texas. Senators, this was a key quote and a key statement by the President that day—that horrific day.

Remember, the Capitol had been stormed. It had been attacked. People had yelled, “Hang Mike Pence.” People had gone after Speaker PELOSI. People brought baseball bats and other weapons. Many Members of Congress in the Senate and the House were fearful for their own lives.

The President didn't call the National Guard. His own administration didn't list him as somebody who they had spoken with to activate the Guard. And he said:

Remember this day forever.

So if he was not guilty of inciting insurrection, if this is not what he wanted, if it wasn't what he desired, by that time the carnage had been on television for hours. He saw what was going on. Everybody saw what was going on.

If it wasn't what he wanted, why would he have said, “Remember this day forever”? Why commemorate a day like that, an attack on the U.S. Capitol, for God's sake? Why would you do that, unless you agreed that it was something to praise, not condemn; something to hold up and commemorate?

No consoling the Nation, no reassuring that the Government was secure, not a single word that entire day condemning the attack or the attackers or the violent insurrection against Congress.

This tweet is important because it shows two key points about Donald Trump's state of mind. First, this was entirely and completely foreseeable, and he foresaw it, and he helped incite it over many months.

He's saying: I told you this was going to happen if you certified the election for anyone else besides me, and you got what you deserve for trying to take it away from me.

And we know this because that statement was entirely consistent with everything he said leading up to the attack.



Second, this shows that Donald Trump intended and reveled in this. Senators, he reveled in this. He delighted in it. This is what he wanted. "Remember this day forever," he said—not as a day of disgrace, as it is to all of us, but as a day of celebration and commemoration, and if we let it, if we don't hold him accountable and set a strong precedent, possibly a continuation later on.

We will, of course, all of us, remember this day but not in the same way that Donald Trump suggested. We will remember the bravery of our Capitol and Metro police forces. We will remember the officer who lost his life and sadly the others who did as well, and the devastation that was done to this country because of Donald Trump.

The PRESIDENT pro tempore. The Senator from Louisiana.

Mr. CASSIDY. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The Senator from Louisiana, Mr. CASSIDY, has a question for both counsel for the former President and counsel for the House.

The clerk will read it, and counsel for the former President will go first, for 2½ minutes, and then the House of Representatives will have 2½ minutes.

The legislative clerk read as follows:

Senator TUBERVILLE reports that he spoke to President Trump at 2:15 p.m. He told the President that the Vice President had just evacuated. I presume it was understood at this time that rioters had entered the Capitol and threatened the safety of Senators and the Vice President. Even after hearing of this, at 2:24 p.m. President Trump tweeted that Mike Pence "lacked courage," and he did not call for law enforcement backup until then.

This tweet and lack of response suggests President Trump did not care that Vice President Pence was endangered, or that law enforcement was overwhelmed. Does this show that President Trump was tolerant of the intimidation of Vice President Pence?

The PRESIDENT pro tempore. Counsel has 2½ minutes.

Mr. Counsel VAN DER VEEN. Directly, no. But I dispute the premise of your facts. I dispute the facts that are laid out in that question and, unfortunately, we are not going to know the answer to the facts in this proceeding because the House did nothing to investigate what went on.

We are trying to get hearsay from Mr. TUBERVILLE. There was hearsay from Mr. LEE—I think it was two nights ago—and we ended where Mr. LEE was accused of making a statement that he never made. But it was a report from a reporter from a friend of somebody who had some hearsay that they heard the night before at a bar somewhere. I mean, that is really the kind of evidence that the House has brought before us. And so I have a problem with the facts in the question because I have no idea, and nobody from the House has given us any opportunity to have any idea.

But Mr. Trump and Mr. Pence have had a very good relationship for a long

time, and I am sure Mr. Trump very much is concerned and was concerned for the safety and well-being of Mr. Pence and everybody else who was over here.

Thank you.

The PRESIDENT pro tempore. The manager on the part of the House of Representatives has 2½ minutes.

Mr. Manager RASKIN. Thank you, Mr. President.

Counsel said before: This has been my worst experience in Washington. For that, I guess we are sorry, but, man, you should have been here on January 6.

The counsel for the President keeps blaming the House for not having the evidence that is within the sole possession of their client, who we invited to come and testify last week.

We sent a letter on February 4. I sent it directly to President Trump, inviting him to come and to explain and fill in the gaps of what we know about what happened there. And they sent back a contemptuous response just a few hours later. I think they, maybe, even responded more quickly to my letter than President Trump did as Commander in Chief to the invasion and storming of the Capitol of the United States.

But in that letter I said: You know, if you decline this invitation, we reserve all rights, including the right to establish at trial that your refusal to testify supports a strong adverse inference.

What's that? Well, Justice Scalia was the great champion of it. If you don't testify in a criminal case, it can't be used against you. Everybody knows that. That is the Fifth Amendment privilege against self-incrimination.

But if it is a civil case and you plead the Fifth or you don't show up, then, according to Justice Scalia and the rest of the Supreme Court, you can interpret every disputed fact against the defendant. That is totally available to us.

So, for example, if we say the President was missing in action for several hours and he was derelict in his duty and he deserted his duty as Commander in Chief, and we say that, as inciter-in-chief, he didn't call this off and they say: Oh, no, he was really doing whatever he can. If you are puzzled about that, you can resolve that dispute—that factual dispute—against the defendant who refuses to come to a civil proceeding. He will not spend one day in jail if you convict him. This is not a criminal proceeding. This is about preserving the Republic, dear Senate. That is what this is about—setting standards of conduct for the President of the United States so this never happens to us again.

So rather than yelling at us and screaming about how "we didn't have time" to get all of the facts about what your client did, bring your client up here and have him testify under oath about why he was sending out tweets denouncing the Vice President of the United States while the Vice President

was being hunted down by a mob that wanted to hang him and was chanting in this building: "Hang Mike Pence. Hang Mike Pence." "Traitor. Traitor. Traitor."

The PRESIDENT pro tempore. The time for the answer is up.

Next question?

The Senator from West Virginia.

Mr. MANCHIN. Mr. President, I send a question to the desk directed to the House managers.

The PRESIDENT pro tempore. The Senator from West Virginia has a question for the House managers.

The clerk will read the question.

The legislative clerk read as follows:

Would the President be made aware of the FBI and intelligence information of a possible attack and would the President be responsible for not preparing to protect the Capitol and all elected officials of government with National Guard and law enforcement as he did when he appeared in front of the Saint John's Episcopal Church?

Ms. Manager PLASKETT. It is the responsibility of the President to know.

The President of the United States, our Commander in Chief, gets daily briefings on what is happening in the country that he has a duty to protect. Additionally, the President would have known, just like the rest of us know, all of the reports that were out there and publicly available.

How many of you received calls saying to be careful on January 6, to be careful that day?

I'm not—I'm seeing reports. It doesn't seem safe. How much more would the President of the United States?

Donald Trump, as our Commander in Chief, absolutely had a duty and a sworn oath to preserve, protect, and defend us and to do the same for the officers under his command. And he was not just our Commander in Chief. He incited the attack. The insurgents were following his commands, as we saw when we read aloud his tweets attacking the Vice President.

And with regard to the Vice President, I'm sure they did have a good relationship, but we all know what can happen to one who has a good relationship with the President when you decide to do something that he doesn't like. I am sure some of you have experienced that when he turns against you after you don't follow his command.

You heard from my colleagues that, when planning this attack, the insurgents predicted that Donald Trump would command the National Guard to help them. Well, he didn't do much better. He may not have commanded the Guard to help them, but it took way, way too long for him to command the Guard to help us.

This is all connected. We're talking about free speech? This was a pattern and practice of months of activity. That was the incitement. That is the incitement—the activity he was engaged in for months before January 6, not just the speech on January 6. All of

it, in its totality, is a dereliction of duty of the President of the United States against the people who elected him—all of the people of this country.

Mr. SULLIVAN. Mr. President.

The PRESIDENT pro tempore. The Senator from Alaska.

Mr. SULLIVAN. Mr. President, I send a question to the desk for the former President's counsel.

The PRESIDENT pro tempore. The Senator from Alaska, Senator SULLIVAN, has a question for the House counsel.

The clerk will read the question.

The legislative clerk read as follows:

Mr. SULLIVAN. Mr. President.

The PRESIDENT pro tempore. For the former President's counsel. Sorry about that.

Mr. SULLIVAN. Thank you, sir.

The legislative clerk read as follows:

The House manager said yesterday that due process is discretionary, meaning the House is not required to provide and, indeed, did not provide in this snap impeachment any constitutional protection to a defendant in the House impeachment proceedings. What are the implications for our constitutional order of this new House precedent combined with the Senate's power to disqualify from public office a private citizen in an impeachment trial?

The PRESIDENT pro tempore. Counsel has 5 minutes.

Mr. Counsel VAN DER VEEN. Mr. President, that is a complicated question. Could I have that read again?

The legislative clerk read as follows:

The House managers said yesterday that due process is "discretionary," meaning the House is not required to provide, and indeed did not provide in this snap impeachment, any constitutional protections to a defendant in House impeachment proceedings. What are the implications for our constitutional order of this new House precedent combined with the Senate's power to disqualify from public office a private citizen in an impeachment trial?

Mr. Counsel VAN DER VEEN. Mr. President, well, first of all, due process is never discretionary. Good Lord, the Constitution requires that the accused have the right to due process because the power that a prosecutor has to take somebody's liberty when they are prosecuting them is the ultimate thing that we try to save.

In this case, just now, in the last 2 hours, we have had prosecutorial misconduct. What they just tried to do was say that it is our burden to bring them evidence to prove their case, and it is not. It is not our burden to bring any evidence forward at all.

What is the danger? Well, the danger is pretty obvious. If the majority party doesn't like somebody in the minority party and they are afraid they may lose the election or if it is somebody in the majority party and there is a private citizen who wants to run against somebody in the majority party, well, they can simply bring impeachment proceedings. And, of course, without due process, they are not going to be entitled to a lawyer. They are not going to be entitled to have notice of the charges against them.

It puts us into a position where we are the kind of judicial system and governing body that we are all very, very afraid of. From what we left hundreds of years ago, and when regimes all around this world that endanger us—that is how they act; that is how they conduct themselves: without giving the accused due process, taking their liberty, without giving them just a basic fundamental right, under the 5th to the 14th applied to the States, due process. If you take away due process in this country from the accused, if you take that away, there will be no justice and nobody, nobody will be safe.

But it is patently unfair for the House managers to bring an impeachment proceeding without any—again, without any investigation at all and then stand up here and say: One, they had a chance to bring us evidence; and, two, let's, let's, let's see what we can do about flipping around somebody's other constitutional rights to having a lawyer or to having a—to see the evidence at all. It just gets brought in without anybody, as it was here, without anybody having an opportunity to review it beforehand. They actually sent it to us on the 9th, the day after we started this.

So it is a really big problem. The due process clause applies to this impeachment hearing, and it has been severely and extremely violated. This process is so unconstitutional because it violates due process. I am not even going to get into the jurisdiction part.

The due process part should be enough to give anybody who loves our Constitution and loves our country great pause to do anything but acquit Donald Trump.

Thank you.

The PRESIDENT pro tempore. The Senator from Connecticut.

Mr. BLUMENTHAL. Mr. President, I send a question to the desk for the House managers.

The PRESIDENT pro tempore. The Senator from Connecticut, Senator BLUMENTHAL, has a question for the House managers.

The clerk will read the question.

The legislative clerk read as follows:

Former President Trump and his attorneys have cited the Brandenburg v. Ohio case in support of their argument that the First Amendment protects Trump. Did the Brandenburg case prohibit holding public officials accountable, through the impeachment process, for the incitement of violence?

Mr. Manager RASKIN. Thank you, Mr. President, Senators.

So let's start with the letter of more than 140 constitutional law professors, which I think they described as partisan in nature. That is a slur on the law professors, and I hope that they would withdraw that. There are very conservative luminaries on that list, including the cofounder of the Federalist Society, Ronald Reagan's former Solicitor General, Charles Fried; as well as prominent law professors across the intellectual, ideological, and First Amendment spectrum.

And they all called their First Amendment arguments frivolous, which they are.

Now, they have retreated to the position of Brandenburg v. Ohio. They want their client to be treated like a guy at the mob, I think they said, a guy in the crowd who yells something out. Even on that standard, this group of law professors said there is a very strong argument that he is guilty even under the strict Brandenburg standard.

Why? Because he incited imminent, lawless action and he intended to do it and he was likely to cause it. How did we know he was likely to cause it? He did cause it. They overran the Capitol, right?

So even if you want to hold the President of the United States of America to that minimal standard and forget about his constitutional oath of office, as I said before, that would be a dereliction of legislative duty on our part if we said all we are going to do is treat the President of the United States like one of the people he summoned to Washington to commit an insurrection against us. OK.

The President swore to preserve, protect, and defend the Constitution of the United States. That is against all comers, domestic or foreign. That is what ours says, right? Did he do that? No. On the contrary. He is like the fire chief. He doesn't just say: Go ahead and shout "fire" inside a theater. He summons the mob and sends the mob to go burn the theater down, and when people start madly calling him and ringing alarm bells, he watches it on TV. And he takes his sweet time for several hours and turns up the heat on the deputy fire chief, whom he is mad at because he is not making it possible for him to pursue his political objectives.

And then, when we say, "We don't want you to be fire chief ever again," he starts crying about the First Amendment. Brandenburg was a case about a bunch of Klansmen who assembled in a field, and they weren't near anybody such that they could actually do violent damage to people, but they said some pretty repulsive, racist things. But the Supreme Court said they weren't inciting imminent lawless action because you couldn't have a mob, for example, break out, the way that this mob broke out and took over the Capitol of the United States of America.

And, by the way, don't compare him to one of those Klansmen in the field asserting their First Amendment rights. Assume that he were the chief of police of the town who went down to that rally and started calling for, you know, a rally at the city hall and then nurturing that mob, cultivating that mob, pulling them in over a period of weeks and days, naming the date and the time and the place, riling them up beforehand, and then just say: Be my guest. Go and stop the steal.

Come on. Back to Tom Paine. Use your common sense. Use your common

sense. That is the standard of proof we want. They are already treating their client like he is a criminal defendant. They are talking about beyond a reasonable doubt. They think that we are making a criminal case here.

My friends, the former President is not going to spend 1 hour or 1 minute in jail. This is about protecting our Republic and articulating and defining the standards of Presidential conduct, and if you want this to be a standard for totally appropriate Presidential conduct going forward, be my guest, but we are headed for a very different kind of country at that point.

The PRESIDENT pro tempore. The Senator from Kansas.

Mr. MARSHALL. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The Senator from Kansas, Mr. MARSHALL, has a question for the counsel for the former President.

The clerk will read the question.

The legislative clerk read as follows:

The House Managers' single Article of Impeachment is centered on the accusation that President Trump singularly incited a crowd into a riot. Didn't the House managers' contradict their own charge by outlining the premeditated nature and planning of this event and by also showing the crowd was gathered at the Capitol even before the speech started and barriers were pushed over some 20 minutes before the conclusion of President Trump's speech?

Mr. Counsel VAN DER VEEN. Yes. The House managers contradicted their own charge by outlining the premeditated nature and planning of this event and by also showing the crowd gathered at the Capitol, even before the speech started, and barriers were pushed over some 20 minutes before the conclusion of President Trump's speech. The answer is yes.

And I want to take the rest of my time to go back to the last question because it was completely missed by the House managers.

Brandenburg v. Ohio is an incitement case. It is not an elected official case. That is Wood and Bond. And the whole problem that the House managers have in understanding the First Amendment argument here is that elected officials are different than anybody else. He is talking about fire chiefs. Fire chiefs are not elected officials. Police officers aren't elected officials.

Elected officials have a different, a higher standard on the holdings that I gave you—the highest protections, I should say. It is not a higher standard. It is a higher protection to your speech because of the importance of political dialogue. Because of what you all say in your public debate about policy, about the things that affect all of our lives, that is really important stuff, and you should be free to talk about that in just about any way that you can.

Brandenburg comes into play, from a constitutional analysis perspective, when you are talking about incitement. Is the speech itself inciteful to riot or lawlessness—one of the two—and the answer here is no.

In Brandenburg, through—again, Bible Believers require you to look at the words of the speech. You actually can't go outside the words of the speech. You are not allowed to in the analysis.

So all the time they are trying to spend on tweets going back to 2015 or everything they want to focus on that was said in the hours and the days afterward are not applicable or relevant to the scholastic inquiry as to how the First Amendment is applied in this Chamber in this proceeding. So, again, we need to be focused on what is the law and then how do we apply it to this set of facts.

So it is important to have that understanding that elected officials and fire chiefs are treated differently under First Amendment law, and that is to the benefit of you all, which is to the benefit of us all because we do want you to be able to speak freely without fear that the majority party is going to come in and impeach you or come in and prosecute you to try to take away your seat where you sit now. That is not what the Constitution says should be done.

But, yes, they do. They do contradict themselves, of course.

Thank you.

The PRESIDENT pro tempore. The Senator from Maryland.

Mr. VAN HOLLEN. Mr. President, I send a question to the desk for the House managers.

The PRESIDENT pro tempore. The Senator from Maryland, Senator VAN HOLLEN, has a question for the managers.

The clerk will read the question.

The legislative clerk read as follows:

Would you please respond to the answer that was just given by the former President's counsel?

The PRESIDENT pro tempore. The House manager will be recognized.

Mr. Manager RASKIN. Mr. President, thank you.

I am not sure which question the Senator was referring to, but let me quickly just dispense with the counsel's invocation again of Bond v. Floyd. This is a case I know well, and I thank him raising it.

Julian Bond was a friend of mine. He was a colleague of mine at American University. He was a great civil rights hero. In his case, he got elected to the Georgia State Legislature and was a member of SNCC, the Student Non-violent Coordinating Committee, the great committee headed up by the great Bob Moses for a long time. He got elected to the Georgia Legislature, and they didn't want to allow him to be sworn in. They wouldn't allow him to take his oath of office because SNCC had taken a position against the Vietnam war. So the Supreme Court said that was a violation of his First Amendment rights not to allow him to be sworn in.

That is the complete opposite of Donald Trump. Not only was he sworn in on January 20, 2017, he was President

for almost 4 years before he incited this violent insurrection against us, and he violated his oath of office. That is what this impeachment trial is about—his violation of his oath of office and his refusal to uphold the law and take care that the laws are faithfully executed.

Please don't desecrate the name of Julian Bond, a great American, by linking him with this terrible plot against America that just took place in the storming of the U.S. Capitol.

I am going to turn it over to my colleague Ms. PLASKETT.

Ms. Manager PLASKETT. Thank you.

Let's just be clear. President Trump summoned the mob, assembled the mob, lit the flame. Everything that followed was his doing. Although he could have immediately and forcefully intervened to stop the violence, he didn't. In other words, this attack would not have happened without him.

This attack is not about one speech. Most of you men would not have your wives with one attempt of talking to her.

(Laughter.)

It took numerous tries. You had to build it up. That is what the President did as well. He put together the group that would do what he wanted, and that was to stop the certification of the election so that he could retain power to be President of the United States, in contravention of an American election.

The PRESIDENT pro tempore. The Senator from Florida.

Mr. RUBIO. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The question is from the Senator from Florida, and it is to both sides.

The clerk will read the question. The House managers will go first for the first 2½ minutes.

The legislative clerk read as follows:

Voting to convict the former President would create a new precedent that a former official can be convicted and disqualified by the Senate. Therefore, is it not true that under this new precedent, a future House, facing partisan pressure to "Lock her up," could impeach a former Secretary of State and a future Senate be forced to put her on trial and potentially disqualify from any future office?

The PRESIDENT pro tempore. The House managers go first.

Mr. Manager RASKIN. Mr. President, Senators, three quick points here.

First of all, I don't know how many times I can say it. The jurisdictional issue is over. It is gone. The Senate settled it. The Senate entertained jurisdiction exactly the way it has done since the very beginning of the Republic in the Blount case, in the Belknap case, and you will remember, both of them, former officials.

In this case, we have a President who committed his crimes against the Republic while he was in office. He was impeached by the House of Representatives while he was in office. So the hypothetical suggested by the gentleman

from Florida has no bearing on this case because I don't think you are talking about an official who was impeached while they were in office for conduct that they committed while they were in office.

The PRESIDENT pro tempore. The counsel for the former President has 2½ minutes.

Mr. Counsel VAN DER VEEN. Thank you.

Could I have the question read again to make sure I have it right and can answer it directly?

The legislative clerk read as follows:

Voting to convict the former President would create a new precedent that a former official can be convicted and disqualified by the Senate. Therefore, is it not true that under this new precedent, a future House, facing partisan pressure to "Lock her up," could impeach a former Secretary of State and a future Senate be forced to put her on trial and potentially disqualify from any future office?

Mr. Counsel VAN DER VEEN. If you see it their way, yes. If you do this the way they want it done, that could happen to, the example there, a former Secretary of State. But it could happen to a lot of people, and that is not the way this is supposed to work. Not only could it happen to a lot of people, it would become much more regular too.

But I want to address that, and I want you to be clear on this. Mr. RASKIN can't tell you on what grounds you acquit. If you believe—even though there was a vote that there is jurisdiction, if you believe jurisdiction is unconstitutional, you can still believe that. If you believe that the House did not give appropriate due process in this, that can be your reason to acquit. If you don't think they met their burden in proving incitement, that these words incited the violence, you can acquit. Mr. RASKIN doesn't get to give you under what grounds you can acquit. So you have to look at what they have put on in its totality and come to your own understanding as to whether you think they have met their burden to impeach.

But the original question is an absolutely slippery slope that I don't really think anybody here wants to send this country down.

Thank you.

Mr. BENNET. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The Senator from Colorado sends a question to the desk.

I would note just for the—as the hour tends to get late, I would note for all counsel, as Chief Justice Roberts noted on January 21, 2020, citing the trial of Charles Swaine in 1905, all parties in this Chamber must refrain from using language that is not conducive to civil discourse.

The Senator from Colorado, Senator BENNET, has a question for the House managers, and the clerk will read the question.

The legislative clerk read as follows:

Since the November election, the Georgia Secretary of State, the Vice President, and

other public officials withstood enormous pressure to uphold the lawful election of President Biden and the rule of law. What would have happened if these officials had bowed to the force President Trump exerted or the mob that attacked the Capitol?

The PRESIDENT pro tempore. The House managers have 5 minutes.

Mr. Manager CASTRO of Texas. I want to take a minute and remind everybody about the incredible pressure that Donald Trump was putting on election officials in different States in this country and the intimidation that he was issuing, and I want to remind everyone of the background of Donald Trump's call to one secretary of state, the secretary of state from Georgia, Mr. Raffensperger.

Donald Trump tried to overturn the election by any means necessary. He tried again and again to pressure and threaten election officials to overturn the election results. He pressured Michigan officials, calling them late at night and hosting them at the White House.

He did the same thing with officials in Pennsylvania. He called into a local meeting of the Pennsylvania Legislature, and he also hosted them at the White House, where he pressured them.

In Georgia, it was even worse. He sent tweet after tweet attacking the secretary of state until Mr. Raffensperger got death threats to him and his family. His wife got a text that said:

Your husband deserves facing a firing squad.

A firing squad for doing his job.

Mr. Raffensperger stood up to him. He told the world that elections are the bedrock of this society and the votes were accurately counted for Donald Trump's opponent.

Officials like Mr. Sterling warned Trump that if this continued, someone is going to get killed, but Donald Trump didn't stop. He escalated it even further. He made a personal call.

He made a personal call. You heard that call because it was recorded. The President of the United States told the secretary of state that if he does not find votes, he will face criminal penalties.

Please, Senators, consider that for a second, the President putting all of this public and private pressure on elected officials, telling them that they could face criminal penalties if they don't do what he wants.

And not just any number of votes that he was looking for—Donald Trump was asking the secretary of state to somehow find the exact number of votes Donald Trump lost the State by. Remember, President Biden won Georgia by 11,779 votes. In his own words, President Trump said:

All I want to do is this. I just want to find 11,780 votes.

He wanted the secretary of state to somehow find the precise number, plus one, of votes that he needed to win.

As a Congress and as a nation, we cannot be numb to this conduct. If we

are and if we don't set a precedent against it, more Presidents will do this in the future. This will be a green light for them to engage in that kind of pressure and that kind of conduct.

This could have gone a very different way if those elected officials had bowed to the intimidation and the pressure of the President of the United States. It would have meant that, instead of the American people deciding this election, President Trump alone would have decided this American election. That is exactly what was at stake, and that is exactly what he was trying to do. He intended, wanted to, and tried to overturn the election by any means necessary. He tried everything else that he could do to win. He started inciting the crowd; issuing tweet after tweet; issuing commands to stop the count, stop the steal. He worked up the crowd, sent a "save the date."

So it wasn't just one speech or one thing; he was trying everything. He was pressuring elected officials. He was riling up his base, telling them the election had been stolen from them, that it had been stolen from him. It was a combination of things that only Donald Trump could have done. For us to believe otherwise is to think that somehow a rabbit came out of a hat and this mob just showed up here on their own, all by themselves.

This is dangerous, Senators, and the future of our democracy truly rests in your hands.

The PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The Senator from Texas, Mr. CORNYN, has a question for both counsel for the former President and the House managers.

The clerk will read the question, and we will recognize first the counsel for the former President.

The legislative clerk read as follows:

The House managers have argued that if the Senate cannot convict former officers, then the Constitution creates a January exception pursuant to which a President is free to act with impunity because he is not subject to impeachment, conviction, and removal and/or disqualification. But isn't a President subject to criminal prosecution after he leaves office for acts committed in office, even if those acts are committed in January?

Mr. Counsel CASTOR. The Senator from Texas's question raises a very, very important point. There is no such thing as a January exception to impeachment. There is only the text of the Constitution, which makes very clear that a former President is subject to criminal sanction after his Presidency for any illegal acts he commits.

There is no January exception to impeachment. There is simply a way we treat high crimes and misdemeanors allegedly committed by a President when he is in office—impeachment—and how we treat criminal behavior by a private citizen when they are not in office.

The PRESIDENT pro tempore. The House managers.

Mr. Manager RASKIN. Mr. President, Senators, thank you for this excellent question.

Wouldn't a President who decides to commit his crimes in the last few weeks in office, like President Trump by inciting the insurrection against the counting of electoral college votes, be subject to criminal prosecution by the U.S. attorney for the District of Columbia, for example, the Department of Justice?

Well, of course he would be, but that is true of the President regardless of when he commits his offense in office. In other words, that is an argument for prosecuting him if he tried to stage an insurrection against the Union in his third year in office or his second year in office. You could say, well, he could be prosecuted afterwards.

The reason that the Framers gave Congress—the House the power to impeach; the Senate the power to try, convict, remove, and disqualify, was to protect the Republic. It is not a vindictive power.

I know a lot of people are very angry with Donald Trump about these terrible events that took place. We don't come here in anger, contrary to what you heard today. We come here in the spirit of protecting our Republic, and that is what it is all about. But their January exception would essentially invite Presidents and other civil officers to run rampant in the last few weeks in office on the theory that the House and the Senate wouldn't be able to get it together in time—certainly according to their demands for months and months of investigation—wouldn't be able to get it together in time in order to vindicate the Constitution. That can't be right. That can't be right.

We know that the peaceful transfer of power is always the most dangerous moment for democracies around the world. Talk to the diplomats. Talk to the historians. They will tell you that is a moment of danger. That is when you get the coups. That is when you get the insurrections. That is when you get the seditious plots. And you know what, you don't even have to read history for that. You don't even have to consult the Framers. You don't have to look around the world. It just happened to us. The moment when we were just going to collect the already-certified electoral college votes from the States by the popular majorities within each State—except for Maine and Nebraska, which do it by congressional district as well as statewide, but otherwise, it is just the popular majorities in the States. And we were about to certify it, and we got hit by a violent, insurrectionary mob.

Don't take our word for it. Listen to the tapes, unless they are going to claim those are fabricated too. And the people are yelling: "This is our house now" and "Where are the 'blank' votes at?" and "Show us the votes," et cetera.

The PRESIDENT pro tempore. The time is up.

Mr. Manager RASKIN. Thank you. The PRESIDENT pro tempore. The majority leader.

Mr. SCHUMER. Mr. President, it is my understanding that there are no further questions on either side.

The PRESIDENT pro tempore. The Republican leader.

Mr. McCONNELL. That is correct. I know of no further questions on our side.

Mr. SCHUMER. I ask unanimous consent that the time for questions and answers be considered expired.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCHUMER. Now, Mr. President, I ask unanimous consent that it be in order for myself and Senator McCONNELL to speak for up to 1 minute each and then it be in order for me to make a unanimous consent request as if in legislative session.

The PRESIDENT pro tempore. Without objection, it is so ordered.

#### OFFICER EUGENE GOODMAN CONGRESSIONAL GOLD MEDAL ACT

Mr. SCHUMER. Mr. President, in a moment I will ask the Senate to pass legislation that would award Capitol Police Officer Eugene Goodman the Congressional Gold Medal.

In the weeks after the attack on January 6, the world learned about the incredible, incredible bravery of Officer Goodman on that fateful day.

Here in this trial, we saw new video, powerful video showing calmness under pressure, his courage in the line of duty, his foresight in the midst of chaos, and his willingness to make himself a target of the mob's rage so that others might reach safety.

Officer Goodman is in the Chamber tonight.

Officer Goodman, thank you. (Applause, Senators rising.)

The PRESIDENT pro tempore. The Republican leader.

Mr. SCHUMER. Leader McCONNELL. Mr. McCONNELL. Oh, I am sorry.

Mr. SCHUMER. I just want to say I think we can all agree that Eugene Goodman deserves the highest honor Congress can bestow. But before we move to pass this legislation, I want to be clear that he was not alone that day. The Nation saw and has now seen numerous examples of the heroic conduct of the Capitol Police, the Metropolitan Police, and the SWAT teams that were with us on January 6 here in the Capitol, protecting us. Our heartfelt gratitude extends to each and every one of them, particularly now as members of the force continue to bear scars, seen and unseen, from the events of that disgraceful day. Let us give them all the honor and recognition they so justly deserve.

(Applause, Senators rising.)

The PRESIDENT pro tempore. The Republican leader.

Mr. McCONNELL. Mr. President, I am pleased to join the majority leader's request.

January 6 was a day of fear for those who work here in the Capitol and of sadness for many more watching from afar, but that awful day also introduced our Nation to a group of heroes whom we in Congress were already proud to call our colleagues and to whom we owe a great debt.

In the face of lawlessness, the officers of the U.S. Capitol lived out the fullest sense of their oaths. If not for the quick thinking and bravery of Officer Eugene Goodman in particular, people in this Chamber may not have escaped that day unharmed. Officer Goodman's actions reflect a deep personal commitment to duty and brought even greater distinction upon all of the brave brothers and sisters in uniform. So I am proud the Senate has taken this step forward, recognizing his heroism with the highest honor we can bestow.

(Applause, Senators rising.)

Mr. SCHUMER. Mr. President, as if in legislative session, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be discharged from further consideration of S. 35 and that the Senate proceed to its immediate consideration.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 35) to award a Congressional Gold Medal to Officer Eugene Goodman.

There being no objection, the committee was discharged and the Senate proceeded to consider the bill.

Mr. SCHUMER. I ask unanimous consent that the Van Hollen substitute amendment which is at the desk be considered and agreed to; that the bill, as amended, be considered read a third time and passed; and that the motion to reconsider be considered made and laid upon the table.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 890) in the nature of a substitute was agreed to, as follows:

[Purpose: In the nature of a substitute]

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Officer Eugene Goodman Congressional Gold Medal Act".

#### SEC. 2. FINDINGS.

The Congress finds the following:

(1) On January 6, 2021, the United States Capitol Building was attacked by armed insurrectionists.

(2) Members of the United States Capitol Police force were overrun and insurrectionists breached the Capitol at multiple points.

(3) Around 2:14 in the afternoon, United States Capitol Police Officer Eugene Goodman confronted an angry group of insurrectionists who unlawfully entered the Capitol, according to video footage taken by Igor Bobic, a reporter with the Huffington Post.

(4) Officer Goodman, alone, delayed the mob's advance towards the United States Senate Chamber and alerted his fellow officers to the location of the insurrectionists.

(5) Upon reaching a second floor corridor, Officer Goodman noticed the entrance to the Senate Chamber was unguarded.